

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Lihui Zhang *et al.*

Application No.: 10/676,409

Filed: October 1, 2003

For: DETERMINATION OF BEST
TRANSPORTATION GUIDELINES

Examiner: Iwarere, Oluseye

Group Art Unit: 3687

Confirmation No.: 8065

REPLY BRIEF

Mail Stop Appeal Brief – Patents
Commissioner for Patents
Post Office Box 1450
Alexandria, Virginia 22313-1450

Sir:

The Appellants submit the following Reply Brief pursuant to 37 C.F.R. §41.41 for consideration by the Board of Patent Appeals and Interferences (“Board”). This Reply Brief is responsive to the Examiner’s Answer of October 14, 2009.

REMARKS

The Examiner's Answer mailed October 14, 2009 has been received and carefully noted. Claims 1-19 are pending and currently on Appeal.

Favorable reconsideration of the pending claims is respectfully requested in view of the following comments.

I. Rejection of Claims 1, 2, 4, 5, 7-10, 13-16, 18, and 19 Under 35 U.S.C. §103(a) based on Arunapuram and Morimoto

Claims 1, 2, 4, 5, 7-10, 13-16, 18, and 19 are rejected under 35 U.S.C. § 103(a) as being obvious over Arunapuram *et al.* (U.S. 2002/0019759) (“Arunapuram”), in view of Morimoto (U.S. 7,035,856).

1) Independent Claims 1, 4, 10, and 14; Dependent Claims 2, 5, 7-9, 12, 13, 15, and 19

Independent claims 1, 4, 10, and 14 recite “a route determination module to *select* at least one source location *from the set of source locations having the set of products* when the order for the set of products is fulfilled” (emphasis added) or analogous aspects. The Appellants respectfully traverse these rejections for the reasons set forth in the Appeal Brief.

In the Examiner’s Answer, the Examiner states the following.

However, fig. 5 depicts item 100 depicts [sic] receiving the package to be shipped. Therefore, the Examiner respectfully disagrees, because the package is received by the source location, in order to be shipped.

See Examiner's Answer mailed October 14, 2009, pgs. 17 and 18. The Appellants assume that Figure 5, item 100 is a reference to Morimoto. As noted in the Appeal Brief, the regional shipping companies of Morimoto that allegedly equate to the recited source locations do not have the products to be shipped when the order for the products is fulfilled. Rather, as depicted in Figure 5, item 100 of Morimoto, the **requestor** requesting quotes from the regional shipping companies has the products to be shipped when the order is fulfilled. At this point, none of the regional shipping companies have any products because the products are still with the requestor. Accordingly, the Examiner has not established a *prima facie* case of obviousness for all the limitations of the independent claims, including "a route determination module to select at least one source location from the set of source locations having the set of products when the order for the set of products is fulfilled." In view of the foregoing, the Appellants respectfully request reversal of these rejections.

2) Claim 16

Claim 16 recites "the set of order guidelines includes a default order guideline." The Appellants respectfully traverse these rejections for the reasons set forth in the Appeal Brief. Further, an assertion that a cited reference **can** be modified is not sufficient to establish a *prima facie* case of obviousness.

The mere fact that references can be combined or modified does not render the resultant combination obvious unless the results would have been predictable to one of ordinary skill in the art. *KSR International Co. v. Teleflex Inc.*, 550 U.S. 398, 82 USPQ2d 1385, 1396 (2007) ("If a person of ordinary skill can implement a predictable variation, § 103 likely bars its patentability. For the same reason, if a technique has been used to improve one device, and a person of ordinary skill in the art would recognize that it would improve similar devices in the same way, using the technique is obvious unless its actual application is beyond his or her skill.").

See M.P.E.P. §2143.01(III).

In the Examiner's Answer, the Examiner introduces paragraph 0011 of Arunapuram and asserts the following.

This standards-based electronic data interchange is understood as including a default order guideline, because the standards allow information to be conformed to a default.

See Examiner's Answer mailed October 14, 2009, pg. 18. Arunapuram discloses the standards-based electronic data interchange in paragraph 0011 to present an example of electronic communication. Other examples of electronic communication also presented by Arunapuram are the Internet and an Intranet. See Arunapuram, paragraph 0011. Benefits of using electronic communication are, for example, an ability to communicate electronically and in real-time. See *Id.* Arunapuram is silent regarding a default order guideline. The Examiner does not provide any explanation as to why this limitation would be obvious other than it would be "allow[ed]" in Arunapuram. As set forth in the M.P.E.P. and *KSR International*, an allegation that this limitation would be allowed in the cited reference does not establish a *prima facie* case of obviousness. Accordingly, reconsideration and reversal of this rejection are respectfully requested.

3) Claim 18

Claim 18 recites "no product of the set of products is associated with more than one default order guideline." The Appellants respectfully traverse these rejections for the reasons set forth in the Appeal Brief.

In the Examiner's Answer, the Examiner repeats the same statement based on paragraph 0011 of Arunapuram discussed in section I.2 of this Reply Brief. See Examiner's Answer mailed October 14, 2009, pg. 19. The Examiner does not identify any default order guidelines in Arunapuram, much less the aspect that the products cannot be associated with "more than one default order guideline." Accordingly, the

cited references do not teach or suggest all the limitations of this claim; reconsideration and reversal of this rejection are respectfully requested.

II. Rejection of Claims 3, 6, 11, and 17 Under 35 U.S.C. §103(a) based on Arunapuram and Cappellini

Claims 3, 6, 11, and 17 are rejected under 35 U.S.C. §103(a) as being obvious over Arunapuram, in view of Cappellini (U.S. 2003/0014286). Claims 3, 6, 11, and 17 depend from independent claims 1, 4, 10, and 14, respectively, and thus incorporate the limitations thereof. Since the independent claims were rejected under Arunapuram and Morimoto, the Appellants assume that the Examiner intended to reject dependent claims 3, 6, 11, and 17 under Arunapuram, Morimoto, and Cappellini, rather than Arunapuram and Cappellini. The Examiner does not indicate and the Appellants do not discern any part of Cappellini that cures the aforementioned deficiencies of Arunapuram and Morimoto regarding the independent claims. For at least the above reasons regarding the independent claims, Arunapuram, Morimoto, and Cappellini, alone or in combination, do not teach or suggest all the limitations of claims 3, 6, 11, and 17. Reconsideration and reversal of these rejections are respectfully requested.

For the reasons set forth above, the Appellants respectfully request that the Board overturn the rejections of claims 1-19.

Respectfully submitted,

BLAKELY SOKOLOFF TAYLOR & ZAFMAN LLP

Dated: November 27, 2009.

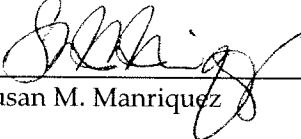
By /Thomas M. Coester/

Thomas M. Coester, Reg. No. 39,637

1279 Oakmead Parkway
Sunnyvale, California 94085-4040
Telephone (310) 207-3800
Facsimile (310) 820-5270

CERTIFICATE OF TRANSMISSION

I hereby certify that this correspondence is being submitted to the United States Patent and Trademark Office electronically via EFS Web on the date shown below.



Susan M. Manriquez

11/30/09
November 30, 2009